

Frequently Asked Questions About Students In The Workplace

When Do Child Labor Laws Apply To Work-Based Learning?

This fact sheet provides an overview of issues typically associated with work-based learning. The primary factors are whether or not a young person is considered *employed* and/or subject to the provisions of the Fair Labor Standards Act (FLSA). An employment relationship does not exist unless students are considered employees. The table below helps to identify students that qualify as non-employees. If there is no employment relationship, then child labor laws do not apply.

THERE IS NO EMPLOYMENT RELATIONSHIP IF ALL OF THE FOLLOWING CRITERIA ARE MET	
FLSA criteria:	Work-based learning criteria:
1. The student receives on-going instruction and close supervision at the employer's work site, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided;	1. There is a planned program of job training and work experience for the student, appropriate to his or her abilities (including training and mastery related to pre-employment and employment skills at progressively higher levels) coordinated with a school-based learning component and leading to a skill certificate;
2. Placement at a work site during the learning experience does not result in the displacement of any regular employee — i.e., no one can be laid off, not hired, or asked to work fewer hours due to the presence of the student;	2. The learning experience encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills;
3. The student is not entitled to a job at the completion of the learning experience (but this does not mean that employers are discouraged from offering employment to students who successfully complete training); and	3. The learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills; and
4. The employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience—although the student may be paid a stipend for expenses such as books or tools.	4. The learning experience provides for real or simulated tasks or assignments which push students to develop higher-order critical thinking and problem-solving skills.

Acknowledgments: Information on child labor laws and liability issues is excerpted, in whole and in part, from *Connections: Linking Work and Learning*, *The Employer Recruitment & Orientation Guide*, published by the Northwest Regional Educational Laboratory and Jobs For the Future through a grant from the U.S. Department of Education, and the *Oregon Work-Based Learning Manual, An Employer's Guide*, developed by the Business Education Compact, the Linn-Benton Education Compact and Nike Corporation for the Oregon Department of Education.

Note: This overview cannot provide legal advice or substitute for current and complete child labor laws. Regardless of employment status, employers are encouraged to adhere to child labor laws concerning hazardous conditions.

What Liability Issues Arise With Work-Based Learning?

Many employers are concerned about liability issues connected with students in the workplace. It is important to understand and differentiate between the responsibilities of schools and employers. The following guidelines will help employers protect themselves from risk and liabilities; however, they do not constitute legal advice or complete local policy.

The Occupational Safety and Health Act (OSHA) regulations that apply in a workplace also apply to *all* students, whether technically employed or not. The employer must provide students with training, protective equipment and any other health or safety consideration afforded to paid employees. The school contact and the employer should coordinate the delivery of safety instruction to students.

Liability issues generally fall into four categories:

Injury to the student at the workplace Students involved in paid work-based learning experiences should be covered under the employer's workers' compensation insurance. Students in unpaid experiences cannot be covered by the employer's workers' compensation plan. However, because students' learning activities off school premises generally are considered to be an extension of the school, they are usually protected by the school district's liability policies. Some school districts and employers obtain special coverage applicable to students in the workplace. After carefully checking with insurance representatives regarding policies that are in place, the school district and employer should sign a written agreement specifying the terms such as insurance requirements, hold harmless statements, responsibility for supervision, and subrogation rights of the liability and coverage for students.

Transportation In general, liability for injuries or accidents during transit rests with the party responsible for the transportation. For example, a student is responsible if he or she drives a personally owned car; the district is responsible if students travel by public transportation; and the employer is responsible if students are transported in a company-owned vehicle.

Injury to patrons or employees of a business The employer and the school district may be liable if a student *causes* injury. By extending its liability policy, a school district can usually provide coverage in the event a student injures someone in the workplace. Exposure to the employer can also occur, particularly if the employer has sole responsibility for training and/or supervising students.

Damage to the employer's property It is possible that either through accidental or intentional acts students will damage the employer's property. The employer's property insurance may provide coverage in such cases, but there will likely be deductibles, payment of which will need to be negotiated between the employer and the school district. Possible solutions are to have students named on the school district's policy if it provides property damage coverage, or to have the employer waive subrogation rights against the district, school, and students.

Information Resources:

- The Wage and Hour Division of the U.S. Department of Labor
- *School-to-Work Opportunities and the Fair Labor Standards Act*, published by the U.S. Departments of Education and Labor
- *Minor Laws of Major Importance*, by the Academy for Educational Development's National Institute for Work and Learning, for the U.S. Department of Education.